"good wholesome political economy and sociology," while a professor at the University of Wisconsin, where he followed the views of his chief, Professor Ely. But, the senator added, this Professor Meyer accepted a call to the University of Chicago, and, after some years of service there, he had put out another book on railways in which his former doctrines were wholly denied, thus showing the necessity of revising his opinions when called to the University of Chicago. Thereupon the oratorical senator is said to have exclaimed that "the University of Chicago smelled of oil like a Kansas town." The humor of the situation to those conversant with railway literature is apparent: the professor at Wisconsin then and now is Balthazar H. Meyer; while the incumbent at Chicago is Hugo R. Meyer. Doubtless the Wisconsin professor has a fair ground for libel.

But the humor of the situation dies away for those who have watched the course of serious journalism for decades, when the New York *Nation* (October 26,1905), in discussing the college president, says:

> When we remember how ignorant and unreasoning the patrons of education often are, the wonder is that more colleges do not, as Senator Dolliver put it, "smell of oil."

If the conclusions of the *Nation* are as little founded as those of the senator so approvingly quoted, we may have good reason to lament the decay of its old-time prestige.

J. Laurence Laughlin.

University of Chicago.

RECENT ILLINOIS DECISIONS REGARDING INJUNCTIONS ISSUED IN THE COURSE OF STRIKES

O'Brien *vs.* People, 216 Ill. 354, June 23, 1905.—This case, and a number of others reported with it, arose upon appeals from sentences imposed for contempt of court. The contempt had been committed by violating injunctions which had been obtained by a manufacturing company against its striking employees and their sympathizers. The strike had been called because the company had refused to sign a closed-shop agreement.

The substance of the injunction orders is set forth in *114 Ill. Appell. Reports*, p. 40. Among the acts and things restrained were the following: the use of threats, intimidation, force, violence, *or*

persuasion, to induce the company to employ or discharge any person, or to induce any employee to leave the service of the company; the interference with, or molestation of, any person employed by, or seeking employment with, the company; and the picketing or patrolling of the approaches to the company's place of business, or the going to the homes of the employees, for either of the purposes last mentioned.

The evidence relied upon to prove violation of the injunction showed that an organized picket had been maintained; that defendants approached those who had been employed in the place of the strikers, and told them that they ought to stay out, that they would have to come to terms with the union; the strongest language which the court quotes as having been used by any of the defendants (he denied having used it) was: "If you don't come out tonight I will lick you." There was evidence of other menacing language, and of a number of acts of assault, but not on the part of the defendants whose cases were before the Supreme Court.

Upon this evidence the defendants were punished for contempt of court, and the sentences were affirmed by the Appellate Court and by the Supreme Court.

In sustaining the lower courts, the Supreme Court reaffirmed a number of principles, which must be regarded as established at the present time, though of relatively recent origin. They are: That an injunction will be granted to restrain acts interfering with business; that all persons are bound by the terms of such an injunction if they have actual knowledge of it, whether formally served or not; that in proceedings for contempt for violating an injunction of a court of equity, a denial on oath on the part of the defendant does not entitle him to a discharge; and that the summary punishment of the contempt upon affidavits after a hearing by the court does not violate the constitutional right to trial by jury.

The importance of the decision lies in the position which it takes with regard to two questions: First: may organized picketing be resorted to to render a strike more effectual? Second: is it lawful for a labor union to call a strike, the object of which is not to better directly the condition of the employees, but to exclude non-union members from employment?

As regards the first point, the Supreme Court, while not quite as explicit as the Appellate Court, clearly treats the organization of a

picket line as a form of intimidation, the "persuasion" brought to bear on those willing to work becoming thereby unlawful as a form of coercion.

Quite recently this view has been still more emphasized by the Appellate Court, which says (Franklin Union *vs.* People, *Chicago Legal News,* Oct. 14, 1905):

> It is idle to talk of picketing for lawful persuasive purposes. Men do not form picket lines for the purpose of conversation and lawful persuasion. . . . . In imagination and in theory a peaceful picket line may be possible, but in fact, a picket line is never peaceful. It is always a formation of actual warfare, and quite inconsistent with everything not related to force and violence. Its use is a form of unlawful coercion.

Similar utterances may be found in other decisions of state and federal courts. The possibility of peaceful, and therefore lawful, picketing seems, however, to be recognized by other courts, notably those of New York (see e. g. Mills *vs.* U. S. Printing Co., *91 N. Y. Suppl. 185*).

This latter view seems preferable and more conservative.

It ought to be possible to distinguish between threats and intimidation on the one side, and the influence of organized numbers on the other. While the former should be suppressed by all available means, a way should be left open for the exercise of the latter. Upon this view the use of the word "persuasion" in the terms of a strike injunction constitutes an unwarranted impairment of the rights of striking employees, provided, it should be added, that the persuasion is not exercised to induce a breach of contract.

With regard to the second point, the Supreme Court says:

> Any attempt to compel an individual, firm, or corporation to execute an agreement to conduct his or its business through certain agencies or by a particular class of employees is not only unlawful and actionable, but is an interference with the highest civil right. Any attempt to coerce the company into signing said agreement by threats to order a strike was unlawful.

Since, in the opinion of the court, the acts of the strikers were unlawful even if the object was lawful, the sweeping condemnation of the object of the strike as unlawful was unnecessary to the decision of the case, and the authority of the statement quoted is correspondingly diminished.

Accepting the statement, however, as unquestioned law, the Superior Court of Cook County has in a recent case (Barnes *vs.*

Typographical Union, *Chicago Legal News,* Oct. 21, 1905) granted an injunction restraining a labor union from committing any acts in the furtherance of a conspiracy to coerce, by threats of a strike, an employer into signing a closed-shop agreement. The court uses the following language:

> The foundation of the strike in this case is the union contract, demanding a closed shop and an eight-hour day. Both the closed shop and the eight-hour day are unlawful when it is attempted to coerce the employer to enter into it against his will. The United States Supreme Court held in Lochner *vs.* The State of New York, *198 U. S. 45*,[1] that the sovereign power of the state of New York could not force an eight-hour day upon the employer, and what the sovereign power of a state cannot do cannot be done by any other power, and the union of labor, like all others, whether natural or artificial persons, must yield its principles whenever they conflict with the law of the land.

This argument is astonishing. Assuming (though the point is by no means settled) that it is beyond the power of the legislature to secure to laborers fair conditions of employment, such a limitation of the police power demands logically that laborers should be allowed to secure these conditions for themselves by their combined efforts, and it can be justified, if at all, only by the existence of the widest possible power of organization and association. The attitude of our courts toward social legislation furnishes the strongest reason why the efforts of labor unions to advance their principles — whether wise and practicable or not — by directing the action of their members in relation to employers, should not be treated as unlawful interference, but should be accorded the same privilege that is conceded to the plea of competition. The tendency of adjudication seems, however, to be against this view. The judicial opposition to interference in the relation between employer and employee, both on the part of the legislature and on the part of labor unions, results in an undue curtailment of the rights of organized labor. The recognition of an adequate measure of this right, if it is to come at all, must come from a legislative regulation of the right of combination, and of privileged, as distinguished from unlawful, interference.

ERNST FREUND.

UNIVERSITY OF CHICAGO.

[1] See note in this case, 597 *supra*.